WONG SONG FOK & ANOR.

v.

CHEW WAN

HIGH COURT MALAYA, KUALA LUMPUR
MOHD. YUSOFF MOHAMED J
[SUIT NO. R8-22-44-87]
29 SEPTEMBER 1989

CIVIL PROCEDURE: *Injunction - Application to set aside injunction granted ex-parte - Requisition by plaintiffs for an extraordinary general meeting rejected by the defendant - Plaintiff granted ex-parte injunction restraining defendant from carrying on activities of the association - Whether there was merit in the plaintiffs grounds to convene the extraordinary general meeting of the association.*

Following an incident at the committee meeting of the Selangor Yan Keng Benevolent Dramatic Association on 28 June 1987, when it was alleged by the plaintiffs that the defendant as chairman of the meeting had behaved in a manner unbecoming of the chair, and the plaintiffs and 24 other members requisitioned for an extraordinary general meeting of the association to discuss the incident. The notice dated 17 July 1987, was rejected by the defendant on 18 August 1987, as having no merit.

Subsequently, on 25 October 1987, the two plaintiffs and 40 other members sent another requisition for an extraordinary general meeting to discuss the same incident and also other matters as agenda of the meeting as follows:

(a) that the defendant had used abusive words against the 1st plaintiff at a meeting on 28 June 1987;

(b) that on the same date and place the defendant shouted at the 2nd plaintiff about the 2nd plaintiff having a revolver;

(c) that a trustee named Ngam Kim Pooi was removed without authority of a general meeting;

(d) that an architects fee of RM4,000 was paid without the approval of a general meeting; and

(e) that *Tai Chi* classes were cancelled by the president of the association without the approval of the physical culture committee.

On 25 November 1987 the defendant again rejected the requisition for the meting as also having no merits. On 30 December 1987, in the application of both the plaintiffs and committee members and on behalf of 40 other members of the association, an *ex-parte* injunction was granted restraining the defendant as president of Selangor Yan Keng Benevolent Dramatic Association from carrying on the activities of the association. Subsequently, the defendant files this application to dissolve the injunction. In his affidavit, he denied ever using abusive words saying that he had no reason to use vulgar words against the 1st plaintiff and also denied that he had shouted at the 2nd plaintiff but stated that he merely passed a general remark at the meeting to the effect that committee members should not take their revolvers to the meeting room to which, he said, the 2nd plaintiff took exception. As to the ground relating to the removal of trustee Ngam Kim Pooi the defendant produced 6 Trust documents from 1956 to 1986 concerning trust properties belonging to the association and in none of these document the name of Ngam Kim Pooi appeared as trustee. The defendant also explained that the 1979 annual reports showing Kim Pooi's name as trustee was a mistake.

As for the architect's fee of RM4,000, copies of the voucher for payment, receipt and minutes of the general meeting approving the payment were produced. As for the fifth ground, the *Tai Chi* instructor admitted accepting money from his students and his dismissal resulted in the suspension of the *Tai Chi* class. The defendant contended that he had not breached any rules of the association.

Held:

[1] The plaintiffs' grounds to convene the extraordinary general meeting of the association lacked merit and it was therefore reasonable for the defendant to have rejected the plaintiffs' notice requisitioning the meeting.

[Injunction dissolved.]

For the plaintiff - Henry Lee; Syarikat Ling & Lee
For the defendants - S.T. Lee; Syarikat S.T. Lee & Partners

JUDGMENT

Mohd. Yusoff Mohamed J:

This is an application by the defendant Chew Wan to dissolve an injunction restraining him as president of Selangor Yan Keng Benevolent Dramatic Association from carrying on the activities of the association.

The injunction was granted *ex-parte* on 30 December 1987, on the application of both the plaintiffs as committee members and on behalf of 40 other members of the association.

The grounds on which the injunction was granted were as stated in the affidavit of the plaintiffs affirmed on 22 December 1987. The facts as deposed by them are these:

Following an incident at the committee meeting of the association on 28 June 1987, when it was alleged by the plaintiff that the defendant as chairman of the meeting had behaved in a manner unbecoming of the chair, the plaintiffs and 24 other members requisitioned for an extraordinary general meeting of the association to discuss the incident which occurred. The notice requisitioning the meeting dated 17 July 1987, was rejected by the defendant on 18 August 1987, as having no merit.

Subsequently, on 25 October 1987, the two plaintiffs and 40 other members sent another requisition for an extraordinary general meeting - Exh. WSF7 - to discuss the same incident of 28 June 1987, and, in addition, put forward 3 other matters as agenda of the meeting. These matters are:

(a) that the defendant had used abusive words against the 1st plaintiff at a meeting on 28 June 1987;

(b) that on the same date and place the defendant shouted at the 2nd plaintiff about the 2nd plaintiff having a revolver;

(c) that a trustee named Ngam Kim Pooi was removed without authority of a general meeting;

(d) that an architect fee of RM4,000 was paid without the approval of a general meeting; and

(e) that a *Tai Chi* class was cancelled by the president without the approval of the physical culture committee.

On 25 November 1987 the defendant again rejected the requisition for the meeting as having no merit also.

Let us now examine the merit of the plaintiffs' grounds to convene the extraordinary meeting in the light of the defendant's affidavit filed in support of this application to dissolve the injunction.

The first ground referred to the incident at the committee meeting held on 28 June 1987 relating to 1st plaintiff. The defendant denies that he had ever used abusive words saying that he had no reason to use vulgar words against the 1st plaintiff.

On balance of probability the defendant's version is likely to be true. The 1st plaintiff lodged his report to the police only one month after the alleged incident i.e., on 29 July 1987. Besides the 2nd plaintiff, none of the other committee members came forward to support the plaintiffs' version. The only other person who was able to say anything about this incident is Wong Woon, who filed his declaration at Exh. WSF17 of encl. (11), stating that he had overheard the defendant shouting obscene words when he was at the association building that day. He was the martial arts instructor dismissed earlier by the defendant and was not at the meeting. He is also a person concerned with ground 5 and for these reasons was not unbiased.

The second ground also occurred at the meeting of 28 June 1987, relating to 2nd plaintiff, The defendant denied that he had shouted at the 2nd plaintiff but states that he merely passed a general remark at the meeting to the effect that committee members should not take their revolvers to the meeting room to which, he said, the 2nd plaintiff took exception.

Regarding this incident the 2nd plaintiff also lodged a police report a month later and, in my view, it is not a matter which a person takes it as abusive if he reacts to the remark so late in the day and in all probability the abuse alleged did not occur. It seems that the committee members were not also with him/2nd plaintiff on this matter.

In any event, r. 26(b) of the Rules of Association provides that requisition for an extraordinary meeting by members must have proposals which are in conformity with the objects of the association. In my view, these two grounds are not within the objects of the association specified in r. 3 thereof.

The 3rd ground relates to removal of trustee Ngam Kim Pooi. On this, the defendant produced 6 trust documents from 1956 to 1986 concerning trust properties belonging to the association. In none of these documents did the name of Ngam Kim Pooi appear as trustee. The plaintiffs' only evidence in support of this ground is the list of office bearers shown in the association's annual report of 1979 where Kim Pooi's name appeared as trustee, without a copy of the association's resolution produced in support of this contention that Ngam Kim Pooi had been elected as trustee, which the plaintiffs as committee members could well obtain from the association, the defendant's explanation that the 1979 annual report was a mistake in showing Kim Pooi's name as trustee seems reasonable.

The 4th ground deals with architect's fee of RM4,000 copies of the voucher for payment, receipt and minutes of the general meeting approving the payment produced as Exhibits CW10(a), (b), (e) and (d) are, in my view, sufficient authority to show (*sic*) compliance with the rules of the association.

The fifth ground, in my opinion, is most flimsy and unreasonable to provide as ground to call an extraordinary meeting of the association. The *Tai Chi* instructor concerned had himself admitted in his declaration at Exh. WSF17 that he had accepted money from his students, though in small amounts, but in breach of the association objects and rules nevertheless.

His dismissal by the defendant resulting in the suspension of *Tai Chi* classes does not seem to breach any rules of the association. In any event, it is within the powers of the president and secretary of the association to supervise the salaried staffs of the association - see rr. 23(3)(d) and 23(6)(c).

It would appear from these that, the plaintiffs' grounds to convene the extraordinary general meeting of the association was lacking in merit (*sic*) and it was therefore reasonable for the defendant to have rejected the plaintiffs' notice requisitioning the meeting.

For these reasons, the injunction order granted against the defendant on 30 December 1987 should be dissolved.

It is to be noted that the injunction order of 30 December 1987 has no undertaking by the plaintiffs as to damages that might have arisen by the order. There is no argument by both Counsels whether such an undertaking is implied. For these reasons I would make no order on the prayer for damages by the defendants.

Order accordingly. Costs as prayed.

Also found at [1989] 2 CLJ 674